



1 On June 14, 2013, the Court ordered that “[a]ny response to the Motion to  
2 Dismiss Case ... shall be filed no later than June 21, 2013.” (ECF No. 11). On June 25,  
3 2013, the parties filed a joint motion to extend the time for Petitioner to respond to the  
4 Motion to Dismiss. (ECF No. 12). On June 28, 2013, the Court granted the joint  
5 motion and extended the deadline for Petitioner to respond to the Motion to Dismiss to  
6 July 2, 2013. (ECF No. 13). The docket reflects that Petitioner did not file a response  
7 to the Motion to Dismiss.

8 On July 11, 2013, the Court granted the unopposed Motion to Dismiss (ECF No.  
9 9), dismissed the action without prejudice, and ordered the case closed. (ECF No. 15).

10 On August 6, 2013, Petitioner filed the Motion to Reopen Case and Motion for  
11 Attorneys’ Fees. (ECF No. 18). Petitioner requests that this Court reopen the case  
12 pursuant to Federal Rule of Civil Procedure 60 subsections (b)(1) and (b)(6) on the  
13 grounds of mistake, inadvertence, surprise, or excusable neglect. (ECF No. 18-1).  
14 Petitioner contends that her “mistake in failing to file a motion for attorneys’ fees before  
15 this [C]ourt prior to the dismissal is excusable as counsel mistakenly believed that an  
16 opposition to Respondent’s motion to dismiss the matter as moot would have been  
17 frivolous as counsel had confirmed that the child indeed had returned to her home  
18 state.” *Id.* at 2. Petitioner contends that this Court may award attorneys’ fees and  
19 expenses incurred by or on behalf of the petitioner pursuant to 42 U.S.C. section 11607.  
20 *Id.* at 3. Petitioner asserts that “attorneys’ fees can be awarded under circumstances in  
21 which the case has been dismissed as moot and thus there is no final judgment in the  
22 [petitioner’s] favor [when] the [petitioner] obtained the relief sought,” and cites in  
23 support several California state court cases that awarded fees pursuant to California  
24 Code of Civil Procedure section 1021.5. *Id.* at 3-5. Petitioner requests that this Court  
25 “grant an order for Respondent to pay the sum of \$15,750.00 of attorneys’ fees incurred  
26 by counsel for Petitioner,” and “costs and expenses in the amount of \$500.00.” *Id.* at  
27 5.

28 On August 9, 2013, Respondent filed a Response in Opposition to the Motion to

1 Reopen Case and Motion for Attorneys' Fees. (ECF No. 20). Respondent contends  
2 that relief from a final judgment under Federal Rule of Civil Procedure 60(b)(1) is  
3 unavailable on the ground of mistake for choices made "based upon an incorrect  
4 assessment of the consequences" (ECF No. 20-3 at 1, 5), and that "an attorney's  
5 ignorance or carelessness is not cognizable" as excusable neglect. (ECF No. 20-3 at 1-  
6 3). Respondent contends that Federal Rule of Civil Procedure 60(b)(6) is "used  
7 sparingly ... to prevent manifest injustice where extraordinary circumstances prevented  
8 a party from taking action in a timely manner to avert or correct an erroneous  
9 judgment," and "may not be applied where other grounds in Rule 60 do apply." *Id.* at  
10 6-7. (citation omitted). Respondent contends that Petitioner alleges "grounds  
11 specifically covered in Rule 60(b)(1), so[] these ground[s] cannot serve as a basis to  
12 reopen under Rule 60(b)(6)." *Id.* at 6-7. (citations omitted). Respondent asserts that  
13 an award of attorney's fees to applicants under the Hague Convention is not mandatory.  
14 Respondent contends that because the current motion is pending in federal court, "none  
15 of the [California] cases [Petitioner] cited in her motion can be relied on by this court."  
16 *Id.* at 7. If the Motion to Reopen Case is granted, Respondent requests an evidentiary  
17 hearing to address factors relevant to whether attorneys' fees should be awarded and the  
18 reasonableness of the amount of opposing counsel's attorneys' fees.

19 On August 30, 2013, Petitioner filed a Reply. (ECF No. 22). Petitioner contends  
20 that relief is available under Rule 60(b)(1) for her mistake in filing her request for  
21 attorneys' fees in state court because the mistake was reasonable and Petitioner acted  
22 in good faith. *Id.* Petitioner contends that the circumstances of this case warrant relief  
23 under Rule 60(b)(6) to prevent manifest injustice. *Id.*

## 24 **II. Discussion**


25 The sole legal authority for Petitioner's request for attorneys' fees is 42 U.S.C.  
26 section 11607(b)(3). Section 11607(b)(3) states: "Any court ordering the return of a  
27 child pursuant to an action brought under section 11603 of this title shall order the  
28 respondent to pay necessary expenses incurred by or on behalf of the petitioner,

1 including court costs, legal fees, foster home or other care during the course of  
2 proceedings in the action, and transportation costs related to the return of the child,  
3 unless the respondent establishes that such order would be clearly inappropriate.” 42  
4 U.S.C. § 11607(b)(3). Even if the requirements of Rule 60(b) had been met, Petitioner  
5 has failed to show that the requirements of section 11607(b)(3) are satisfied. Section  
6 11607(b)(3) imposes “as a precondition for awarding costs that the court order the  
7 return of a child.” *Allman v. Coyle*, 319 F. Supp. 2d 540, 544 (E.D. Pa. 2004)(internal  
8 quotation marks omitted). Because Petitioner has not shown that this Court or any other  
9 court “order[ed] the return of a child pursuant to an action brought under section  
10 11603,” the Court has no authority to direct Respondent to pay the expenses incurred  
11 by Petitioner. 42 U.S.C. § 11607(b)(3); *see Allman*, 319 F. Supp. 2d at 544 (“Because  
12 I have made no such order in this case, I have no authority to direct [respondent] to pay  
13 the expenses incurred by [petitioner].”).

14 **III. Conclusion**

15 IT IS HEREBY ORDERED that the Motion to Reopen Case and Motion for  
16 Attorneys’ Fees is DENIED. (ECF No. 18). This case remains closed.

17 DATED: October 23, 2013

18   
19 **WILLIAM Q. HAYES**  
20 United States District Judge  
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